

been filed or (2) was not required to be filed pursuant to paragraph (b) because it did not contain substantive changes from a prospectus that previously was filed, only the prospectus supplement need be filed under paragraph (b) of this rule, provided that the first page of each prospectus supplement includes a cross reference to the date(s) of the related prospectus and any prospectus supplements thereto that together constitute the prospectus required to be delivered by Section 5(b) of the Securities Act (15 U.S.C. 77e(b)) with respect to the securities currently being offered or sold. The cross reference may be set forth in longhand, provided it is legible.

NOTE: Any prospectus supplement being filed separately that is smaller than a prospectus page should be attached to an 8½" × 11" sheet of paper.

(d) Every prospectus consisting of a radio or television broadcast shall be reduced to writing. Five copies of every such prospectus shall be filed with the Commission in accordance with the requirements of this section.

(e) Each copy of a form of prospectus filed under this rule shall contain in the upper right corner of the cover page the paragraph of this rule, including the subparagraph if applicable, under which the filing is made, and the file number of the registration statement to which the prospectus relates. The information required by this paragraph may be set forth in longhand, provided it is legible.

(f) This rule shall not apply with respect to prospectuses of an investment company registered under the Investment Company Act of 1940 or a business development company.

[14 FR 202, Jan. 14, 1949, as amended at 16 FR 8736, Aug. 29, 1951; 19 FR 400, Jan. 22, 1954; 19 FR 6728, Oct. 20, 1954; 21 FR 1046, Feb. 15, 1956; 52 FR 21260, June 5, 1987; 53 FR 3878, Feb. 10, 1988; 55 FR 23923, June 13, 1990; 56 FR 30054, July 1, 1991; 57 FR 48975, Oct. 29, 1992; 60 FR 26615, May 17, 1995; 62 FR 39763, July 24, 1997]

§ 230.425 Filing of certain prospectuses and communications under § 230.135 in connection with business combination transactions.

(a) All written communications made in reliance on § 230.165 are prospectuses that must be filed with the Commis-

sion under this section on the date of first use.

(b) All written communications that contain no more information than that specified in § 230.135 must be filed with the Commission on or before the date of first use except as provided in paragraph (d)(1) of this section. A communication limited to the information specified in § 230.135 will not be deemed an offer in accordance with § 230.135 even though it is filed under this section.

(c) Each prospectus or § 230.135 communication filed under this section must identify the filer, the company that is the subject of the offering and the Commission file number for the related registration statement or, if that file number is unknown, the subject company's Exchange Act or Investment Company Act file number, in the upper right corner of the cover page.

(d) Notwithstanding paragraph (a) of this section, the following need not be filed under this section:

(1) Any written communication that is limited to the information specified in § 230.135 and does not contain new or different information from that which was previously publicly disclosed and filed under this section.

(2) Any research report used in reliance on § 230.137, § 230.138 and § 230.139;

(3) Any confirmation described in § 240.10b-10 of this chapter; and

(4) Any prospectus filed under § 230.424.

NOTES TO § 230.425: 1. File five copies of the prospectus or § 230.135 communication if paper filing is permitted.

2. No filing is required under § 240.13e-4(c), § 240.14a-12(b), § 240.14d-2(b), or § 240.14d-9(a), if the communication is filed under this section. Communications filed under this section also are deemed filed under the other applicable sections.

[64 FR 61450, Nov. 10, 1999]

§ 230.427 Contents of prospectus used after nine months.

There may be omitted from any prospectus used more than 9 months after the effective date of the registration statement any information previously required to be contained in the prospectus insofar as later information covering the same subjects, including the latest available certified financial

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statement, as of a date not more than 16 months prior to the use of the prospectus is contained therein.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498–1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a–37)

[47 FR 11440, Mar. 16, 1982]

§ 230.427T Information in prospectuses more than nine months after the effective date of the related registration statement.

(a) Notwithstanding the language in Section 10(a)(3) of the Act (15 U.S.C. § 77j(a)(3)), until December 16, 2002, for a registrant that meets the eligibility requirements in paragraph (a)(1) of this section, the audited financial information in a prospectus used more than nine months after the effective date of the registration statement of which that prospectus is a part must be as of a date not more than eighteen months prior to such use; provided that the conditions specified in paragraph (a)(2) of this section are satisfied.

(1) *Eligibility requirements.* A registrant meets the eligibility requirements of this paragraph (a) of this section if:

(i) The registrant has an effective registration statement under the Act that is required to include financial statements for any entity that has a fiscal year ending between and including November 30, 2001 (or, in the case of a registered investment company, January 1, 2002) and April 15, 2002;

(ii) Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged, on or after March 14, 2002, as the independent public accountant to examine those financial statements for that fiscal year;

(iii) On or before March 14, 2002, the registrant had not obtained a manually signed audit report from Arthur Ander-

sen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements for that fiscal year;

(iv) The registrant is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements; and

(v) The registrant is not a “blank check company” as defined in § 230.419(a)(2) of this chapter.

(2) Conditions.

(i) A prospectus that is used more than nine months after the effective date of the registration statement of which that prospectus is a part includes unaudited financial information that is as of a date not more than sixteen months prior to such use; provided that the registrant provides in the prospectus disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X (§§ 210.3–01–3–20 of this chapter).

(ii) The audited financial information referred to in paragraph (a)(1)(i) of this section in a prospectus used more than nine months after the effective date of the registration statement of which that prospectus is a part must be audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) and the prospectus must include:

(A) A discussion of any material changes from the unaudited financial information; and

(B) Updated or revised information in any other section of the prospectus or documents incorporated by reference that should be updated or revised to reflect the changes in the audited financial information.

(b) This temporary section will expire on December 31, 2002.

[67 FR 13536, Mar. 22, 2002]

EFFECTIVE DATE NOTE: At 67 FR 13536, Mar. 22, 2002, § 230.427T was added effective Mar. 18, 2002 through Dec. 31, 2002.